IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor	:	Niels RUMP
Serial No.	:	09/913,695
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Art Unit	:	2431
Confirmation Number	:	3855
Examiner	:	Matthew T. Henning
Title	:	METHOD AND DEVICE FOR GENERATING AN ENCRYPTED USER DATA STREAM AND METHOD AND DEVICE FOR PLAYING BACK AN ENCRYPTED USER DATA STREAM
Attorney Docket No.	:	SCHO0113

January 12, 2009

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF

Honorable Commissioner for Patents:

Applicants file this Pre-Appeal Brief in response to the Advisory Action mailed December 19, 2008 and the Office Action dated October 10, 2008 for the above-identified patent application.

The Commissioner is authorized to charge any additional fees or credit any overpayment to the Glenn Patent Group Deposit Account No. 07-1445, Customer No. 22,862. Applicants consider this document to be filed in a timely manner.

The Examiner rejects Claims 1-7, 9-14, and 16-17 under 35 USC 103(a) as being unpatentable over Saito (U.S. Patent Number 6,744,894) in view of Rump (DE 196 25 635). Applicants respectfully traverse.

To establish a *prima facie* case of obviousness of a claimed invention, all the claimed features must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Because the combination of Saito and Rump fails to teach or suggest that the part of the payload data that follows the header is unencrypted, the Examiner has failed to establish a *prima facie* case of obviousness.

The Examiner admits that Saito fails to disclose both using the first part of the user data as the unencrypted start section and that the unencrypted start section is placed immediately after the header. The Examiner asserts, however, that Rump teaches that unencrypted data can be used as sample data for the content and that the data should be the first 20 seconds in length of the content. Page 3 of the Final Office Action. Applicants respectfully submit that the payload data following the header in Rump is always encrypted and not unencrypted as the Examiner states.

In Rump, the complete multimedia data stream or payload block is encrypted, or at least the portion of the multimedia data is encrypted, so that there do not remain any audio data that can be replayed <u>without</u> having the decryption k. In column 2, line 62 to column 3, line 5 of the German patent, which corresponds to column 4, lines 1-10 of the US Patent Number 6,735,311, the patent describes a deciphering device, which deciphers the first 20 seconds, because the first 20 seconds are ciphered, and which does not do anything more in case it is a demo player, *i.e.* a demo decrypting device. When, however, the claim version is cleared or released for a certain bit stream, as outlined in column 4, lines 8-10 of the US patent, then a complete decrypting of the whole audio piece is possible.

As a result, the complete user data block is encrypted and a demo version of the player/decrypting device can decrypt the first 20 seconds, and a full version specifically cleared or released can decrypt the complete data stream. As a result, Rump does not

disclose that there is an unencrypted start section because the complete user data block is encrypted.

In Figure 3 of Rump, furthermore, the first part is the ciphered data, rather than an unencrypted start section. As a result, the start section of the user data immediately following the header is ciphered/encrypted data rather than unencrypted data, as recited in independent Claims 1, 6, 12, and 13.

In the Advisory Action, the Examiner states that Rump teaches that the multimedia data can be unencrypted. (Column 7, lines 50-68) However, in this section, Rump states that only a second portion can be unencrypted and that the first portion is encrypted. The claims clearly require that the first portion be unencrypted. The Examiner further asserts that Rump describes that the deciphering device should be able to read the unciphered content in column 10, lines 51-64. However, this section is only related to the header and not the payload.

Additional limitations recited in the independent claims or the dependent claims are not further discussed because the limitations discussed above are sufficient to distinguish the claimed invention from the cited art.

Conclusion

Applicants respectfully posit that the pending claims have been distinguished from the art of record, and that all rejections of the claims have been overcome. Accordingly, Applicants respectfully request allowance of all claims.

Respectfully submitted,

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